IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

S.B.CRIMINAL MISC. PETITION NO. 377/2005
(Kalu Vs. State of Rajasthan & Anr.)

Date of Order : 17/11/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. Ramesh Purohit for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. V.K.Mathur for the non-petitioner No.2.

**BY THE COURT**:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 2.2.2005 passed by Additional Sessions Judge, Pratapgarh (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 4.8.2003 passed by Additional Judicial Magistrate, Ist Class, , Pratapgarh (for short 'the trial court' hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders impugned.

On an application filed by the non-petitioner No.2 under Section 125 Cr.P.C. seeking monthly allowance of

maintenance, the trial court by order dated 4.8.2003 granted monthly allowance of interim maintenance @ Rs. 400/- from the date of application in favour of non-petitioner No.2 and against the petitioner. On a revision, the revisional court did not find any error in the order passed by the trial court. Thus, both the courts below concurrently found the non-petitioner No.2 entitled for the monthly allowance of maintenance from the date of application.

It is contended by learned counsel for the petitioner that the courts below fell in error in granting monthly allowance of maintenance from the date of application. According to learned counsel for the petitioner, in view of sub-section (2) of Section 125 Cr.P.C., normally maintenance should be granted from the date of order and if so ordered, from the date of application.

In the instant case, the trial court ordered to pay the monthly allowance of maintenance from the date of application which was not interfered with by the revisional court.

Keeping in view the Division Bench decision of this Court in Smt. Savita Sharma Vs. Shri Krishan Murari 1990 (1) RLR 400 and the fact that both the courts below have exercised the discretion in granting monthly allowance of maintenance from the date of application, in my view, it cannot be said that the orders impugned would result in serious miscarriage of

justice or abuse of process of the Court.

The petition has no force and it is, therefore, dismissed. Interim order dated 8.4.2005 is vacated and stay petition also stands dismissed.

**(H.R.PANWAR),J.**

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